

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALKINI LAUDERDALE, et al.,

Plaintiffs,

VS.

HOM PROPERTIES, L.P., et al.,

Defendants.

CASE NO. 12-CV-2254 - IEG (RBB)

ORDER GRANTING JOINT MOTION TO REMAND

[Doc. No. 3]

On July 26, 2012, Plaintiffs filed this landlord-tenant action in San Diego County Superior Court, alleging various state law claims as well as claims under the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the “Lead-Based Paint Act”), 42 U.S.C. § 852(d). [See Doc. No. 1, Ex. 2.] On September 14, 2012, Defendants removed to this Court, invoking federal question jurisdiction on the basis of the Lead-Based Paint Act claims. [Doc. No. 1 at 2-3.] On September 20, 2012, Plaintiff filed an amended complaint, omitting any claims under the Lead-Based Paint Act or other federal law. [See Doc. No. 2.] On September 28, 2012, the parties filed a joint motion to remand, stipulating that no federal questions remain as a basis for this Court’s jurisdiction. [Doc. No. 3 at 2.] For the reasons below, the Court finds that it lacks subject matter jurisdiction and thus **GRANTS** the parties’ joint motion to remand.

DISCUSSION

“A civil case commenced in state court may, as a general matter, be removed by the defendant to federal district court, if the case could have been brought there originally.” *Martin v.*

1 Franklin Capital Corp., 546 U.S. 132, 134 (2005) (citing 28 U.S.C. § 1441). But “[i]f at any time
2 before final judgment it appears that the district court lacks subject matter jurisdiction, the case
3 shall be remanded.” 28 U.S.C. § 1447(c). Where, as here, removal is predicated on 28 U.S.C. §
4 1331, *i.e.*, federal question jurisdiction, “a defendant may not remove a case to federal court unless
5 the plaintiff’s complaint establishes that the case ‘arises under’ federal law.” *Franchise Tax Bd. of*
6 *State of Cal. v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 10
7 (1983). To “arise under” federal law, “a right or immunity created by the Constitution or laws of
8 the United States must be an element, and an essential one, of the plaintiff’s cause of action.” *Id.*
9 at 11.

10 Here, as the parties agree, [see Doc. No. 3], Plaintiff's amended complaint asserts only
11 state law causes of action, of which no right or immunity under the Constitution or federal law is
12 an essential element. [See Doc. No. 2.] Thus, as no federal question is essential to Plaintiff's
13 claims, no federal question jurisdiction exists. *Franchise Tax Bd.* at 11. Accordingly, the Court
14 lacks subject matter jurisdiction and this case must be remanded. 28 U.S.C. § 1447(c).

CONCLUSION

16 For the foregoing reasons the Court hereby **GRANTS** the parties' joint motion and
17 **REMANDS** this action to state court.

IT IS SO ORDERED.

10 || DATED: October 5, 2012

Irma E. Gonzalez
IRMA E. GONZALEZ